

APPEAL NO. 161927
FILED NOVEMBER 14, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 14, 2016, with the record closing on August 15, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the (date of injury), compensable injury does not extend to lumbar degenerative disc disease at L3-4, L4-5, and L5-S1; lumbar nerve root compression at L4-5 and L5-S1; nonunion of L5-S1; and cauda equina syndrome; (2) the appellant (claimant) reached maximum medical improvement (MMI) on April 18, 2014; and (3) the claimant's impairment rating (IR) is 5%.

The claimant appealed, disputing the hearing officer's determination of the extent of the compensable injury as well as her determinations of MMI and IR. The claimant argues that the hearing officer's analysis of the extent-of-injury issue is against the great weight and preponderance of the evidence. The claimant additionally argues, he should prevail on the disputed extent-of-injury conditions and therefore the only adoptable certification of MMI/IR is an MMI date of July 15, 2015, with a 25% IR. The respondent (carrier) responded, urging affirmance of the determinations disputed by the claimant.

DECISION

Affirmed in part as reformed; reversed and remanded in part; and reversed and rendered by striking in part.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury at least in the form of a cervical strain, thoracic strain, right shoulder strain, and lumbar strain. The hearing officer's Finding of Fact 1.F. was a stipulation by the parties of the certifications of MMI/IR provided by the carrier-selected required medical examination (RME) doctor, (Dr. N). However, the hearing officer mistakenly stated Dr. N certified that the claimant reached MMI on April 16, 2014, rather than the date of April 18, 2014. A review of the record reflects that the parties stipulated Dr. N certified MMI on April 18, 2014, and the certification from Dr. N in evidence additionally reflects that Dr. N certified that the claimant reached MMI on April 18, 2014. The information regarding the alternative certification from Dr. N is correct. We reform Finding of Fact 1.F. in part to conform to the evidence and the actual stipulation made by the parties. Finding of Fact No. 1.F. is reformed as follows: The carrier-selected (RME) doctor, Dr. N, certified that the claimant reached MMI on April 18, 2014, and he

assigned a 0% IR. In the alternative, Dr. N certified that the claimant reached MMI on July 15, 2015, and he assigned a 25% IR.

EXTENT OF INJURY

That portion of the hearing officer's determination that the (date of injury), compensable injury does not include lumbar degenerative disc disease at L3-4, L4-5, and L5-S1, lumbar nerve root compression at L4-5, nonunion of L5-S1, and cauda equina syndrome is supported by sufficient evidence and is affirmed.

The hearing officer determined that the compensable injury does not extend to lumbar nerve root compression at L5-S1. However, the extent-of-injury issue regarding the lumbar nerve root compression in dispute at the CCH was only for the levels of L3-4 and L4-5. Accordingly, we render by striking the hearing officer's findings, conclusions, and decision regarding the lumbar nerve root compression at L5-S1 as exceeding the scope of the issue before the hearing officer.

Additionally, the Benefit Review Conference (BRC) Report in evidence contained additional conditions as part of the extent-of-injury dispute. The hearing officer read the extent-of-injury issue from the BRC Report at the CCH and the parties agreed that it was the extent-of-injury issue in dispute. There was no request or agreement to modify the extent-of-injury issue on the record. The extent-of-injury issue in the BRC Report was stated as follows: Does the compensable injury of (date of injury), extend to lumbar degenerative disc disease at L3-4, L4-5, and L5-S1, lumbar nerve root compression at L3-4 and L4-5, spondylolisthesis at L5-S1, lumbar stenosis at L5-S1, lumbar disc herniation/protrusion at L4-5 and L5-S1, nonunion of L5-S1, and cauda equina syndrome? The hearing officer failed to make a finding of fact, conclusion of law, or a decision on the following conditions that were included in the extent-of-injury issue as stated in the BRC Report and agreed to by the parties at the CCH: lumbar nerve root compression at L3-4, spondylolisthesis at L5-S1, lumbar stenosis at L5-S1, and lumbar disc herniation/protrusion at L4-5 and L5-S1. Accordingly, we reverse the hearing officer's decision as being incomplete and remand that portion of the extent-of-injury issue regarding whether the (date of injury), compensable injury extends to lumbar nerve root compression at L3-4, spondylolisthesis at L5-S1, lumbar stenosis at L5-S1, and lumbar disc herniation/protrusion at L4-5 and L5-S1 to the hearing officer for further consideration consistent with this decision.

MMI/IR

We have reversed and remanded a portion of the extent-of-injury issue to the hearing officer for further consideration. Accordingly, we also reverse and remand the

issues of MMI and IR for further consideration after a full determination of the extent-of-injury issue has been made.

SUMMARY

We reform Finding of Fact No. 1.F. as follows: The carrier-selected (RME) doctor, Dr. N, certified that the claimant reached MMI on April 18, 2014, and he assigned a 0% IR. In the alternative, Dr. N certified that the claimant reached MMI on July 15, 2015, and he assigned a 25% IR.

We affirm that portion of the hearing officer's determination that the (date of injury), compensable injury does not include lumbar degenerative disc disease at L3-4, L4-5, and L5-S1, lumbar nerve root compression at L4-5, nonunion of L5-S1, and cauda equina syndrome.

We reverse and render by striking the hearing officer's findings, conclusions, and decision regarding the lumbar nerve root compression at L5-S1 as exceeding the scope of the issue before the hearing officer.

We reverse a portion of the hearing officer's extent-of-injury determination as being incomplete and remand to the hearing officer to determine whether the (date of injury), compensable injury extends to lumbar nerve root compression at L3-4, spondylolisthesis at L5-S1, lumbar stenosis at L5-S1, and lumbar disc herniation/protrusion at L4-5 and L5-S1.

REMAND INSTRUCTIONS

On remand the hearing officer is to make findings of fact, conclusions of law, and a determination as to whether the compensable injury of (date of injury), extends to lumbar nerve root compression at L3-4, spondylolisthesis at L5-S1, lumbar stenosis at L5-S1, and lumbar disc herniation/protrusion at L4-5 and L5-S1. After a determination has been made regarding the extent of the compensable injury, the hearing officer is to make a determination of MMI/IR.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas

Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge